

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

JACKIE CURTIS PETERSEN §
§
VS. § Civil Action No.: 1-18-cv-205
§
FEDEX FREIGHT INC. AND §
OMOGONIO OCANAS, JR. §

DEFENDANTS' NOTICE OF REMOVAL

TO THE HONORABLE JUDGE OF THIS COURT:

Defendants, FedEx Freight, Inc. and Omogonio Ocanas, Jr. (collectively, "Defendants"), file this Notice of Removal, pursuant to 28 U.S.C. §§ 1441 and 1446, removing this dispute to the United States District Court for the Southern District of Texas, Brownsville Division.

PENDING STATE SUIT

1. On November 27, 2018, Plaintiff, Jackie Curtis Petersen ("Plaintiff") commenced an action in the 404th Judicial District Court of Cameron County, Texas, captioned Cause No. 2018-DCL-06855; *Jackie Curtis Petersen v. FedEx freight, Inc. and Omogonio Ocanas, Jr.*, in which Plaintiff seeks damages allegedly resulting from a motor vehicle collision that occurred on or about January 18, 2017, in San Antonio, Bexar County, Texas. See Plaintiff's Original Petition at ¶¶ 5.1-5.2, Ex. A.

GROUND FOR REMOVAL

2. The state court action is one over which this Court has original jurisdiction under the provisions of 28 U.S.C. § 1332, and may be removed to this Court pursuant to the provisions of 28 U.S.C. § 1441, in that it is a civil action wherein the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and diversity of citizenship exists between the properly joined parties.

A. Amount In Controversy Exceeds \$75,000

3. Under 28 U.S.C. §1446(c)(2), if removal is sought on the basis of the jurisdiction conferred by 28 U.S.C. §1332, the sum demanded in good faith in the initial pleadings shall be deemed to be the amount in controversy. *See* 28 U.S.C. §1446(c)(2). In his Original Petition, Plaintiff claims that he sustained “severe and life changing injuries” as a result of the alleged collision. *See* Plaintiff’s Original Petition at ¶ 5.2, Ex. A. Plaintiff seeks to recover damages for past and future: medical, hospital, and pharmaceutical expenses; physical pain and suffering; mental anguish; physical impairment; and lost wages and loss of earnings capacity. *Id.* at ¶ 9.2.

4. Additionally, Plaintiff specifically pleads that he seeks “monetary relief over one million dollars (\$1,000,000.00).” *Id.* at ¶ 3.3. Therefore, Plaintiff clearly believes his damages are more than \$75,000.

B. Diversity of Citizenship

5. Plaintiff is a citizen of the State of Minnesota. *See* Plaintiff’s Original Petition at ¶ 2.1.

6. Defendant, FedEx Freight, Inc., is a corporation existing under the laws of the State of Arkansas with its principal place of business in the State of Arkansas.

7. Defendant, Omogonio Ocanas, Jr. is a citizen of the State of Kansas.

PROCEDURAL REQUIREMENTS FOR REMOVAL

8. Upon filing of this Notice of Removal of the cause, Defendants gave written notice of the filing to Plaintiff and his counsel as required by law. A copy of this Notice is also being filed with the Clerk of the Court in Cameron County, Texas, where this cause was originally filed. A copy of all processes, pleadings, and orders has been filed separately with this

Court pursuant to 28 U.S.C. § 1446(a). This removal is timely filed within 30 days of Plaintiff's lawsuit being served upon Defendants, FedEx Freight, Inc. and Omogonio Ocanas, Jr.

STATE COURT DOCUMENTS

9. The following documents are attached to this Notice of Removal:

- | | |
|-------------|---|
| Exhibit "A" | Plaintiff's Original Petition |
| Exhibit "B" | Proof of Service |
| Exhibit "C" | An index of matters being filed. |
| | C-1 Copy of the state court Docket Sheet/Record. |
| | C-2 Copy of process. |
| | C-3 A list of all counsel of record, addresses, telephone numbers, and parties. |
| | C-4 Civil Cover Sheet |

TIMING OF REMOVAL

10. Defendant FedEx Freight, Inc. was served with Plaintiff's Original Petition on or about December 5, 2018.

11. Defendant Omogonio Ocanas, Jr. was served with Plaintiff's Original Petition on or about December 6, 2018.

12. This Notice of Removal is being filed within 30 days of service of the Plaintiff's Original Petition and is timely filed under 28 U.S.C. § 1446(b).

VENUE

13. This is a statutorily proper venue under the provisions of 28 U.S.C. § 1441(a) because this district and division embrace the county where the removed action was pending.

JURY DEMAND

14. Defendants hereby request a trial by jury pursuant to FED. R. CIV. P. 38.

PRAYER

15. Defendants have established that the amount in controversy exceeds \$75,000.00. Additionally, Defendants have established that diversity of citizenship exists between the parties in this case. For these reasons, and in conformity with 28 U.S.C. § 1446, Defendants respectfully remove the civil action captioned Cause No. 2018-DCL-06855; *Jackie Curtis Petersen v. FedEx freight, Inc. and Omogonio Ocanas, Jr.*, in the 404th Judicial District Court of Cameron County, Texas. Defendants pray for such other and further relief, both general and special, at law and in equity, to which they may be justly entitled.

Respectfully submitted,

/s/ Les Pickett

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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing has been forwarded to the following known counsel of record via Electronic Court Filing and/or facsimile on this 28th day of December, 2018:

Edna Elizondo
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/s/ Andrew S. Krone

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